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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. 321

BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL-DISTRICT 204, COUNTY OF WILL, STATE OF ILLINOIS; ARTHUR L. BRUNING, DAVID R. ROSS, HOWARD JOHNSON AND CLAYTON WINTERSTEEN,

Petitioners,

vs.

RAYMOND SCOVILLE, A MINOR, AND MERRILL SCOVILLE, AS FATHER AND NEXT FRIEND; ARTHUR BREEN, A MINOR, AND JERRY BREEN, AS FATHER AND NEXT FRIEND,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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OPINIONS BELOW.

The United States District Court for the Northern District of Illinois, Eastern Division, District Judge Napoli presiding, dismissed Respondents' Complaint and filed a written Opinion in support of that Order on July 19, 1968.

(App. A, A1.) On September 25, 1969, the Seventh Circuit Court of Appeals affirmed the action of the District Court. (App. B, A11.) Circuit Judge Kiley dissenting. (App. B, A18.) An En Banc rehearing was allowed and on April 1, 1970, the District Court was reversed and remanded. (App. C, A22.) Senior Circuit Judge Castle dissenting. (App. C, A35.).

JURISDICTION.

The judgment and opinion of the Court of Appeals were entered on April 1, 1970. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1) and a conflict in decisions between the Seventh Circuit Court of Appeals (the Opinion from which this Writ is sought), and the Sixth Circuit Court of Appeals (*Kenneth R. Jones* v. *The State Board of Education of and for the State of Tennessee*, 407 F. 2d 834 (6th Cir. 1969), *Cert. granted*, 90 S. Ct. 145 1969, No. 731, 1969 term; also *Marietta Norton, et al.* v. *The Discipline Committee of East Tennessee State University*, 419 F. 2d 195 (6th Cir. 1969), *Cert. petitioned*, October term 1969 No. 1011.)

QUESTIONS PRESENTED.

1. Whether or not the action of Joliet School District, Petitioner herein, was a reasonable and permissible limitation of the Respondents', Students', First Amendment Rights when the School District punished the students for the sale and distribution of a pamphlet within the confines of the school which advocated and urged students to disregard the notices and publications of the school by tearing them up, which referred to the dean of the school as having a "sick mind", which contained the statement "oral sex may prevent tooth decay", and which contained a review of a movie in which sexual intercourse and sadism were reviewed.

2. Was the action of Petitioner, Joliet School District, permissible under Illinois Revised Statutes, Chapter 122, Sec. 10-22.6 which allows expulsion for gross disobedience or misconduct.

CONSTITUTIONAL PROVISIONS INVOLVED.

Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances. U. S. Const. Amend. I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U. S. Const. Amend. XIV Sec. 1.

STATUTES INVOLVED.

Illinois Revised Statutes, Chap. 122 § § 10-22.1 to 10-22.6 (1967):

SEC. 10-22. Powers of the Board.

The school board shall have the powers enumerated in sections 10-22.1 through 10-23.34 . . .

SEC. 10-22.6. Suspension or expulsion of pupils: (a) to expel pupils guilty of *gross disobedience or misconduct*, and no action shall lie against them for such expulsion. Expulsion shall take place only after the parents have been requested to appear at a meeting of the board to discuss their child's behavior. Such request shall be made by registered or certified mail

and shall state the time, place and purpose of the meeting. The board at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective. (b) To suspend or by regulation to authorize the superintendent of the district or the principal, superintendent of the district or the principal of any school to suspend pupils of gross disobedience or misconduct for a period not to exceed 7 days or until the next regular meeting of the board, whichever first occurs, and no action shall lie against them for such suspension.

STATEMENT OF THE CASE.

The Respondents herein were students at Joliet Central High School who were expelled from the High School for the distribution of a pamphlet within the confines of the school building. Respondents brought a Civil Rights action for declaratory judgment, injunctive relief and damages alleging violation of First and Fourteenth Amendment rights as well as an unconstitutional application of Illinois Revised Statutes, Chapter 122, Section 10-22.6 (1967). The District Court originally dismissed the suit for failure to state a claim upon which relief could be granted and the Seventh Circuit Court of Appeals, one Judge dissenting, affirmed the District Court's judgment dismissing the Complaint. Subsequently the Seventh Circuit Court of Appeals granted Respondents' Petition for a Rehearing en banc and the District Court's judgment was reversed and remanded for other proceedings. The period of expulsion concerning the Respondents had ended and Plaintiffs were in fact admitted to Joliet Central High School as Seniors for the school year 1969-70. This rendered moot the question of injunctive relief against the Board of Education's order. The only questions remaining concerned restraining the School from sending information to Colleges and ex-

punging the expulsions from the school record. (App. C, A23.)

On January 15, 1968, the Respondents, Scoville and Breen, were in their Junior year at Joliet High School, Central Campus; they were 17 and the average age of students in the Joliet High School District ranged from 14 to 18. On that day Scoville and Breen sold or distributed within the Joliet Central High School building a number of copies of a pamphlet entitled "Grass High", 60 copies being admitted by Respondents in Respondents' Complaint. The pamphlet was circulated in the High School building and was therefore available to all students in the School ranging from Freshman to Senior. "Grass High" contains an editorial entitled "My Reply" written by Respondent, Authur Breen. "My Reply" attacked a notice called "Bits of Steel" which had been printed by the School and distributed to children within the School for them to take home to their parents and contained "The Principal's Report to Parents". "My Reply" by Respondent, Arthur Breen, urged and advocated that the children in the School refuse to accept and destroy printed material handed out by the School that was meant for their parents. *"I urge all students in the future to either refuse to accept or destroy upon acceptance all propaganda that Central's Administration publishes."* (App. D, A39.) Respondent, Breen, also attacked the School's attendance regulations as *"utterly idiotic and asinine"*; stated that the Senior Dean of the Central High School had a *"sick mind"* and concluded that *"our whole system of education with all its arbitrary rules and schedules seems dedicated to nothing but wasting time"*. (App. D, A40, 47.)

"Grass High" also contained the statement *"oral sex may prevent tooth decay"* (App. D, A41) and a review

of a movie called "*Penthouse*" "*. . . it's about Bruce and Barbara, a couple indulging in extramarital activities in a borrowed posh pad, who opened the door one morning for the meter man. In trooped Tom and his playmate, Dick. They quickly tie up Bruce in gay ribbons and force Barbara through the early stages of their all day party. First, there are two large tumblers of whiskey for her and puffs of pot, then a little sadism with a switch blade for Bruce while Barbara submits willingly to a gang bang. And just when we think they're done, another merrymaker arrives, Harry, the female keeper of Tom and Dick, and we're off for more games.*" (App. D, A48.)

On January 18, 1968, the students were advised they would be punished for the distribution and sale of "Grass High" within the School. They were advised not to report for final examinations, were no longer allowed to participate in debate and on January 22, 1968, were suspended for the first 5 days of the spring, 1968 semester. Recommendations were then sent to the Joliet School Board that the students be expelled for the remainder of the school term ending in June, 1968. In accordance with Illinois Revised Statutes, Chapter 122, Section 10-22.6 the students, Scoville and Breen, and their parents were notified that a hearing on the recommended expulsion would be had at the School Board meeting February 23, 1968, and they were invited to attend. Neither Breen, Scoville or their parents chose to attend the School Board meeting but instead wrote a letter on Scoville and Breen's behalf in which they admitted that the contents and sale of the pamphlet within the School was wrong but asked that the boys not be expelled. At the School Board meeting on February 23, 1968, a resolution was adopted expelling the students from Joliet High School for the remainder of the semester; one of the reasons being for violating and urging the violation of school orders or procedures. The students,

Scoville and Breen, were however allowed to attend night school, and they were allowed to attend a physics course in the day school to maintain their position in the Junior Class and did enter their Senior year with their regular class. (App. A, A3; App. C, A23.)

On April 17, 1968, the students filed an action in the District Court seeking a Declaratory Judgment and Injunction against the School District, and on May 3, 1968, they filed a Motion for Temporary Injunction and Restraining Order. On May 3, 1968, Joliet School District appeared and filed a Motion to Dismiss the Complaint and both parties filed respective Briefs on the Motion. The Briefs pointed out the issues to be decided by the District Court, those issues being:

1. That the Court lacked jurisdiction over the subject matter;

2. That the School District was immune from suit under the provisions of Illinois School Code, Illinois Revised Statutes, Chapter 122, Section 10-22.6;

3. That the reasonableness of the School District's actions was apparent from the face of the Complaint demonstrated in the subject matter of the pamphlet, "Grass High";

4. The School District's actions were within the authority delegated to them by the State of Illinois under Illinois Revised Statutes, Chapter 122, Section 10-22.6.

The Complaint had attached as an exhibit the pamphlet, "Grass High", and the District Court had the entire subject matter presented on the pleadings as filed. Arguments were presented on May 24, June 17, June 25 and June 27, of 1968, and on July 19, 1968, the District Court allowed the Motion to Dismiss and filed an Opinion in support of its ruling. The District Court determined that it had jurisdiction over the subject matter, and that

public School Boards as well as the States from which they draw their authority are not immune from First Amendment limitations. The Court further found that "*it is apparent from the face of the Complaint here that the minor Plaintiffs had engaged in speech on school grounds which amounted to an immediate advocacy of, and incitement to, disregard of school administrative procedures*". The Court further found that the contents of "Grass High" advocated a direct violation of established school procedures and consfituted a direct and substantial threat to the successful operation of the High School. (App. A, A7.)

In its Opinion delivered September 25, 1969, the United States Court of Appeals for the Seventh Circuit, three Judges sitting, determined that the intent and purpose of the editorial "My Reply" was the incitement of students to ignore accepted school procedures and the condemnation of school officials. That Opinion rejected the contention of the Respondents that there must be an immediate affect of disrupting school rontine finding that if that contention were to be accepted, it would require a ruling that school authorities are without power to regulate student expression until it disrupts the school's operation as an educational institution. The Opinion determined that Joliet High School District might reasonably forecast substantial disruption of or material interference with the school activities because of the distributed pamphlet and the action was reasonable on the part of the school officials in order to maintain discipline and order. (App. B, A11-17.) The District Court's decision was affirmed.

On April 1, 1970, the Seventh Circuit Court of Appeals reversed its prior Opinion after a rehearing en banc, Senior Circuit Judge Castle dissenting. The majority opinion determined that the students may have intended their criticism to substantially disrupt or materially inter-

fere with the enforcement of school policies but that was of no significance. The Opinion determined that the publication itself, despite its language or intention, cannot be the basis for disciplinary action without an affirmative showing of disruption or an evidentiary hearing demonstrating the reasonableness of the school's forecasting a disruption or material interference with the school policies. (App. C, A22-30.)

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED WHEN THERE IS A CONFLICT IN THE DECISIONS OF CIRCUIT COURTS OF APPEALS.

One of the responsibilities assumed by the Supreme Court of the United States is to resolve conflicts between different Circuit Courts of Appeals involving the same or similar Constitutional questions. (*F. T. C.* v. *Flotill Products, Inc.*, 88 S. Ct. 401 (1967); *Willingham* v. *Morgan*, 89 S. Ct. 1813 (1969); *U. S.* v. *Demko*, 87 S. Ct. 382 (1966).)

This Court recently granted Certiorari in the case of *Jones* v. *State Board of Education*, Cert. granted, 90 S. Ct. 145 (1969) (No. 731, 1969 term). *Jones* arose in the Sixth Circuit Court of Appeals and one of the questions was the constitutionality of the action by the University in limiting students' rights to distribute literature designed to interfere with the orderly presentation of University materials and procedures. The Sixth Circuit held that the limitations imposed by the University on the students and the resulting punishments were a reasonable limitation of the students' First Amendment Rights. (*Jones* v. *State Board of Education*, 407 F. 2d 834 (6th Cir. 1969). A Petition for Writ of Certiorari has recently been filed in the case of *Marietta Norton* v. *The Disciplinc Committee of East Tennessee State University* (October term 1969). The *Norton* case is also from the Sixth Circuit Court of Appeals. The action of the University involved therein was found to be Constitutionally permissible when the school imposed limitations and resulting punishments on students that distributed literature on the campus calculated to cause a disturbance and disruption of school ac-

tivities and subject the school to ridicule and contempt. (*Marietta Norton* v. *The Discipline Committee of East Tennessee State University*, 419 F. 2d 195 (6th Cir. 1969).

In contradiction to the Opinions in *Jones* and *Norton* from the Sixth Circuit Court of Appeals, the Seventh Circuit Court of Appeals in the instant case specifically held that though the Respondents, students, may have intended their distributed pamphlet to substantially disrupt or materially interfere with the enforcement of school policies; that intention was of no significance. (App. C, A28-29.) The Seventh Circuit Court of Appeals held that absent an affirmative showing of actual disturbance or affirmative evidence to establish the eventuality of actual disturbance it made no difference what students said or attempted to do, and this included allowing the Respondents, students, to urge other students in the school to violate accepted school procedures.

Though the *Jones* and *Norton* cases involved limitations on students' First Amendment rights in a University and the instant case involves High School students, the basic questions presented in all three cases are similar in nature and Petitioners respectfully request that their Petition for Writ of Certiorari be granted.

II. A HIGH SCHOOL MAY PROHIBIT THE DISTRIBUTION OF PAMPHLETS WITHIN THE CONFINES OF THE HIGH SCHOOL BUILDING WHEN THE CLEAR INTENTION OF THE DISTRIBUTED PAMPHLET WAS TO SUBSTANTIALLY DISRUPT OR MATERIALLY INTERFERE WITH THE ORDERLY ADMINISTRATION OF THE SCHOOL.

If this decision of the Seventh Circuit Court of Appeals is not reviewed and either overruled or clarified it places schools in the untenable position of attempting to carry out their basic function of educating the young while at

the same time denying the school the necessary right to maintain order and discipline. In determining that Joliet Central High School unreasonably limited the students first amendment rights the Seventh Circuit Court of Appeals relied primarily on *Tinker* v. *Des Moines School District*, 393 U. S. 503 (1969). It is Petitioners' contention that the Circuit Court of Appeals misinterpreted the *Tinker* decision. The Seventh Circuit Court of Appeals determined that there must be an actual disturbance on the school campus or affirmative evidence produced by the school to demonstrate the reasonableness of the school's position in forecasting a disruption or interference with school activities. This was the guiding major premise to be followed despite the clear import of the language urging students to violate school policies and procedures. Unless affirmative evidence was produced to demonstrate that students were in all likelihood going to follow the urgings of the Respondents, students, the School District was without the power to act. This holding in effect denies the schools the right to act to prevent a disturbance before it starts for once the school has acted there will in all probability be no disturbance and the school is left without any affirmative evidence to establish the reasonableness of its position.

Petitioners submit that the *Tinker* decision does not place the schools in such a position and does not stand for the principle relied on by the Seventh Circuit Court of Appeals. *Tinker* recognizes that if the Record discloses facts which might reasonably have led school authorities to forecast substantial disruption of, or material interference with, school activities, the school can constitutionally act. (*Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503 at 509 (1969).) In the instant case it is an established fact that the students' pamphlet "Grass High" openly called for the direct violation of school

procedures and requested that students within the school violate those procedures. The periodical likewise accused the Dean of the school of having a "sick mind" and used improper language within the confines of the educational institution. Examples of the students' misconduct contained in the pamphlet "Grass High" are as follows:

> 1. ". . . The pamphlet started with a message from the Principal, David Ross. This is logical because the entire pamphlet is supposed to be 'The Principal's Report to Parents'. In this article Ross states why the pamphlet was put out and the purpose it is supposed to accomplish, namely, the improvement of communication between parents and administration. He has to be kidding. Surely, he realizes that a great majority of these pamphlets are thrown away by the students, *and in this case that is how it should have been. I urge all students in the future to either refuse to accept or destroy upon acceptance all propaganda that Central's administration publishes . . .*" (App. D, A39.)
>
> 2. ". . . Next came an article on attendance. There's not much I can say about this one. It simply told the haggard parents the *utterly idiotic and asinine procedure* that they must go through to assure that their children will be excused for their absences . . ."
>
> 3. " . . . Our whole system of education with all its arbitrary rules and schedules seems dedicated to nothing but wasting time . . ." (App. D, A40.)

The students, Scoville and Breen, made the following statement regarding the Dean of Joliet High School District No. 204, Central Campus:

> ". . . *It is my opinion that a statement such as this is the product of a sick mind.* Our senior dean because of his position of authority over a large group of young adults poses a threat to our community. Should a mind whose only thought revolves around an act of discipline be allowed to exert influence over the young minds of our community? I think not. I would urge the Board of Education to request that this dean amend his thinking or resign. . . ." (App. D, A47.)

The Students' pamphlet in question also contained the statement:

> "... *Oral sex may prevent tooth decay* ..." (App. D, A41.)

"Grass High" further contained a purported review of a movie.

> "... First, there are two large tumblers of whiskey for her and puffs of pot, then a little sadism with a switch blade for Bruce *while Barbara submits willingly to a gang bang.* And just when we think they're done, another merry-maker arrives, Harry, the female keeper of Tom and Dick, and we're off for more games. ..." (App. D, A48.)

In upholding the action of Joliet Township High School District No. 204 and dismissing the Complaint of Respondents the District Court considered the established fact of the pamphlet and the language contained therein and found that:

> "It is apparent from the face of the Complaint here that the minor Plaintiffs had engaged in speech on school grounds which amounted to an immediate advocacy of, and incitement to, disregard school administrative procedures. Particularly in elementary and secondary schools the State has a compelling interest in maintaining an atmosphere conducive to an orderly program of classroom learning, and to respect for legitimate and necessary administrative rules."
>
> "... where speech takes the form of immediate incitement to disregard of legitimate administrative regulations necessary to orderly maintenance of a public high school system; and where the speech occurs, not on a street or in a public park, where the rights of free speech are virtually absolute, but rather on the very property dedicated to a special public use, the education of younger citizens; and where the speech is directed to an audience which because of its immaturity is more likely than an adult audience to react to the detriment of the school system, then it is the opinion

of this Court that the interest of the State in maintaining the school system outweighs the protection afforded the speaker by the First Amendment. Since the circumstances surrounding the dissemination of "Grass High" are set forth in the Complaint itself, Defendants are entitled to judgment on the pleadings as to the Civil Rights Act claim made by the Plaintiffs here." (App. A, A7-8.)

The Seventh Circuit Court of Appeals, three Judges sitting, in the majority opinion, considered the established fact of the pamphlet itself and the clear import of the language contained therein and upheld the decision of the District Court. In that Opinion the Seventh Circuit Court of Appeals found that:

"...The objectives of the editorial "My Reply" were the incitement of students to ignore accepted school procedures and the condemnation of school officials. Plaintiffs now contend that since their editorial efforts failed to have the immediate effect of disrupting school routine, the school authorities are without power to discipline them. If this Court were to accept Plaintiffs' contention and carry it to its logical conclusion, it would require a ruling that school authorities are without power to regulate student expression until it disrupts the school's operation as an educational institution. Clearly, the Law; as stated in the *Tinker*[1] and *Burnside*[2] cases does not impose such an unreasonable limitation on the disciplinary powers of school officials." (App. B, A16.)

Petitioners respectfully submit that the reason for granting the Writ is indeed a compelling one. Must High School administrators and faculty wait before acting until an actual disruption occurs, or until the school can gather

1. *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503 (1969).

2. *Burnside* v. *Byars*, 363 F. 2d 744 (5th Cir. 1966).

affirmative evidence of that impending disruption when the clear intention and purpose of the students' action is to cause that disruption? Certainly the High School cannot be required to wait until the other students in the school follow the urgings of the Respondents and refuse to follow the accepted school procedures or until other students in the school also accuse the Dean of having a sick mind. If the School District is to accept the subsequent en banc Opinion of the Seventh Circuit Court of Appeals any student in the school can say anything to any faculty member or other student at any time, and unless other students follow that student's example and cause an immediate disruption within the confines of the school, nothing can be done by the school officials.

In balancing the private interests of the student's right to free expression against the school's interest in carrying out its basic function of education in an orderly atmosphere, the scale weighs in favor of the School District. The damage to students in limiting them from advocating a direct violation of school procedures and referring to faculty members as having a sick mind is, we submit, far less than the resultant damage to the school if those urgings are followed. The school would be derelict in its duty in fulfilling its basic function of providing education in an orderly atmosphere if it did not reasonably forecast a substantial disruption of or material interference with school activities when students urge the direct violation of established school procedures. It is not required that the school authorities delay action until after the damage has been caused. *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F. 2d 195 at 199 (1969) (Citing *Dennis* v. *United States*, 341 U. S. 494, at 509 (1951); *Schenck* v. *United States*, 249 U. S. 47 at 52 (1919).

III. A HIGH SCHOOL MAY PROPERLY PUNISH STUDENTS FOR MISCONDUCT.

The area of regulating deportment or conduct within the confines of a high school allows the school officials to prohibit and punish students for ridiculing the Dean of the school and accusing him of being mentally ill. The Seventh Circuit Court of Appeals summarily dismissed that statement recited in "Grass High" stating that the Dean had a "sick mind" and should be removed from the school. Nothing in the Seventh Circuit Court of Appeals en banc Decision deals with the question of deportment and the right of the school to punish for improper language directed to a faculty member. It is the Petitioner's contention that if the Respondents Students while in the school had said this to the Dean or a faculty member either privately or in the presence of other students they could have been punished and their First Amendment Rights would not have afforded protection. There is no distinction in the resulting breakdown of discipline or violation of recognized proper deportment between the above examples and writing it down in a pamphlet and selling the same in the confines of the school, as was done in the instant case. The Courts have consistently allowed schools to regulate the conduct of students relative to deportment (*Esteban* v. *Central Missouri State College*, 415 F. 2d 1077 at 1088 (1969); *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503 (1969); *Dickey* v. *Alabama Board of Education*, 273 F. Supp. 613 (1967); and this has included clothing and the length or style of hair; *Ferrell* v. *Dallas Independent School District*, 261 F. Supp. 545 (1966); *Davis* v. *A. L. Firment*, 269 F. Supp. 524 (1967). There is no requirement that the misconduct cause a commotion or disturbance in the school, nor any requirement that the Dean or Faculty members be subjected to ridicule and contempt by their students.

IV. JOLIET CENTRAL HIGH SCHOOL ACTED WITHIN THE CONSTITUTIONAL LIMITATIONS OF ILLINOIS REVISED STATUTES, CHAPTER 122, SECTION 10-22.6. AND THE ILLINOIS STATUTE WAS APPLIED IN CONFORMITY WITH THE REQUIREMENTS OF THE FIRST AMENDMENT.

The majority opinion of the Seventh Circuit Court of Appeals en banc Decision determined that the action of Joliet Central High School was an unjustified invasion of Plaintiffs' First and Fourteenth Amendment Rights, and that, therefore, the application by the school of the Illinois Statute was done in an unconstitutional manner. (App. C, A30.) No question was raised by Respondents concerning the Constitutionality of the Illinois Statute involved; the only question being the application of that Statute to the facts in the instant case. The answer to that question rests on whether or not the School District unconstitutionally abridged the students' First and Fourteenth Amendment Rights. As already presented in the foregoing Reasons for Granting the Writ it is Petitioners' contention that the students' action demonstrated gross disobedience and misconduct and the application of the Illinois Statute was Constitutional. (App. A, A8-10, App. B, A17.) The Respondents, students, sought to and did violate and intrude in the school's affairs and procedures, and the School District acted reasonably in forecasting a substantial disruption or material interference with the school's activities. Based on the above Petitioners' action in causing the expulsion of the students was not Constitutionally prohibited.

CONCLUSION.

The Writ of Certiorari should be granted to consider the problems and rights of the school involved in this case and in order to resolve the difference of Opinions in *Jones* v. *State Board of Education of and for the State of Tennessee*, 407 F. 2d 834 (6th Cir. 1969), *Cert. granted* 90 S. Ct. 145 (1969) No. 731, 1969 term; *Marietta Norton* v. *The Discipline Committee of East Tennessee State University*, 419 F. 2d 195 (6th Cir. 1969) and this case from the Seventh Circuit Court of Appeals en banc Decision entered April 1, 1970.

Respectfully submitted,

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APPENDIX A.

IN THE UNITED STATES DISTRICT COURT.
For the Northern District of Illinois,
Eastern Division.

RAYMOND SCOVILLE, a minor, and MERRILL SCOVILLE, as father and next friend; ARTHUR BREEN, a minor, and JERRY BREEN, as father and next friend,
Plaintiffs,
vs.
BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204, COUNTY OF WILL, STATE OF ILLINOIS: ARTHUR L. BRUNING, DAVID R. ROSS, HOWARD JOHNSON and CLAYTON WINTERSTEEN,
Defendants.

No. 68 C 717.

OPINION.

On January 15, 1968, minor plaintiffs Raymond Scoville and Arthur Breen, 17 year old students at Joliet Central High School, distributed 60 copies of a 14 page mimeographed "literary journal", entitled "Grass High", to other students and faculty members at Joliet Central High School. A copy of "Grass High" attached as an exhibit to the complaint shows that it contained various editorials, poetry, motion picture and record album reviews, and mis-

cellaneous anecdotes. One prominent editorial, entitled "My Reply," read in part:

> . . . The pamphlet started with a message from the principal, David Ross. This is logical because the entire pamphlet is supposed to be "The Principal's Report to Parents." In this article Ross states why the pamphlet was put out and the purpose it is supposed to accomplish namely, the improvement of communication between parents and administration. He has got to be kidding. Surely, he realizes that a great majority of these pamphlets are thrown away by the students, and in this case that is how it should have been. I urge all students in the future to either refuse to accept or destroy upon acceptance all propaganda that Central's administration publishes . . .

The editorial went on to criticize school attendance regulations as "utterly idiotic and asinine", and concluded that "Our whole system of education with all its arbitrary rules and schedules seems dedicated to nothing but wasting time." Elsewhere, the editorial accused the senior dean of the school of having a "sick mind." It is alleged in the complaint, and must be assumed true in passing on the pending motion to dismiss, that the distribution of "Grass High" created no disturbance which did, or could have caused, any commotion or disruption of classes at Joliet Central High School.

On January 18, 1968, minor plaintiffs were instructed not to report for their final examinations for the Fall semester, 1967/1968. On January 20, 1968, minor plaintiffs were told they could no longer participate in debate team activity. On January 22, 1968, minor plaintiffs were told that they were to be suspended for the first five days of the spring 1968 semester at Joliet Central High School. On January 31, 1968, minor plaintiff Scoville was removed as editor of the school newspaper. Thereafter, recom-

mendations were sent to the Joliet School Board that minor plaintiffs be expelled from Joliet Central for the remainder of the term ending in June, 1968. Parents of the minor plaintiffs, including plaintiffs Merrill Scoville and Jerry Breen, were notified that expulsion of the boys would be recommended at a school board meeting on February 23, 1968; and that as parents of the boys they were invited to attend. The parents of the boys did not attend, but instead sent letters to the school board asking for clemency. At the Board meeting on February 23, a resolution was adopted, expelling minor plaintiffs from the day school at the high school for the Spring 1968 term. The Board found that the publication of "Grass High" constituted a public use of inappropriate and indecent language; a violation of established rules of the school district; a disregard of and contempt for the authorities charged with the administration of Joliet Central campus and the school district; an encouragement to disregard and disobey orders promulgated by the duly constituted authorities of the school and the school district; and an involvement of other students as parties to the preparation and distribution of "Grass High" who were in fact not parties thereto.

Thereafter, a plan was worked out whereby the boys attended night school at Joliet Central, where they were able to make up some, but not all, of the subjects they were formerly taking. They were also permitted to take their physics course, on a "probationary basis," at the day school. They were obliged to pay tuition for the night school classes.

On April 17, 1968, plaintiffs filed this action against the Joliet School authorities, seeking a declaratory judgment that the action of the school board was in violation of plaintiffs' constitutional rights; and seeking a permanent injunction against enforcement of the expulsion order. Plaintiffs contend that the expulsion order constituted a

denial of the rights of the minor plaintiffs of free speech and free press; and that the expulsion order constituted an exercise of authority in excess of the power delegated to the school board by the State of Illinois.

Plaintiffs did not present their motion for a temporary restraining order until May 3, 1968. At various hearings on that date and thereafter, this Court has indicated its belief that some of the relief sought, in particular the request for reinstatement for the Spring semester, was moot, due to plaintiffs' delay in pressing the litigation here. Although minor plaintiffs will be readmitted to Joliet Central High School for the Autumn 1968-1969 semester, this cause is not entirely moot, since plaintiffs also pray for an injunction against defendants, to restrain them from communicating the substance of the events alleged to various colleges or employers to whom the boys may apply in the future; and for an order expunging from the records of Joliet Central High School any evidence of the occurrences alleged. Plaintiffs also seek incidental damages.

The sole authority cited by defendants for their actions here is Illinois Revised Statutes, Chapter 122, § 10-22, which provides,

> § 10-22. Powers of the Board.
>
> The school board shall have the powers enumerated in sections 10-22.1 through 10-22.34. . . .
>
> § 10-22.6 Suspension or expulsion of pupils.
>
> (a) to expel pupils guilty of gross disobedience or misconduct, and no action shall lie against them for such expulsion. Expulsion shall take place only after the parents have been requested to appear at a meeting of the board to discuss their child's behavior. Such request shall be made by registered or certified mail and shall state the time, place and purpose of the meeting. The board at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective.

(b) To suspend or by regulation to authorize the superintendent of the district or the principal of any school to suspend pupils guilty of gross disobedience or misconduct for a period not to exceed 7 days or until the next regular meeting of the board, whichever first occurs, and no action shall lie against them for such suspension.

Presently before the Court is defendants' motion to dismiss, on the grounds that the Court lacks jurisdiction over the subject matter; that these defendants are immune from suit under Ill. Rev. Stat. Chapter 122, § 10-22.6; and that the reasonableness of defendants' actions here is apparent from the face of the complaint. In their motion defendants also ask the Court to refrain from deciding the question of whether or not defendants' actions herein were within the authority delegated to them by the State of Illinois, in order to allow the state courts to decide that question.

I. Jurisdiction Over the Subject Matter.

Plaintiffs allege that defendants have applied a statute of the State of Illinois, Ill. Rev. Stat., Chapter 122, Section 10-22.6, in such a manner that plaintiffs were deprived of their First Amendment rights under the Constitution of the United States. The allegations of a federally guaranteed constitutional right, and the alleged deprivation of that right by defendants acting under color of state law, are sufficient to give the Court jurisdiction over the subject matter. Accordingly, judgment must be on the merits, not via dismissal for want of jurisdiction, cf. *Bell* v. *Hood*, 327 U. S. 678 (1946).

II. Civil Rights Act Claim.

Public school boards, as well as the states from which they draw their authority, are not immune from First Amendment limitations. Thus it has been held that compulsory flag salute laws for school children, *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, and short voluntary nondenominational school prayers, *Engel* v. *Vitale*, 370 U. S. 421 (1962), are violative of the First Amendment prohibition against establishment of religion. Even in a special purpose public building such as a high school, speech may not be suppressed where it presents absolutely no threat to the state's legitimate interest in providing an orderly, efficient classroom atmosphere. *Burnside* v. *Byars*, 363 F. 2d 744 (1966). (Regulation forbidding high school students from wearing "freedom buttons" held unconstitutional where there is absolutely no showing that educational activity had been interfered with.)[1] Compare *Blackwell* v. *Issaquena County Board of Education*, 363 F. 2d 749 (1966) (wearing of "freedom buttons" in high school may be punished, where there is evidence of commotion, boisterousness, and undermining of authority as a result of the wearing of buttons.)

State supported public high schools are special purpose public buildings. As such, there is no constitutional objection to limiting speech therein which interferes with the purpose to which they are dedicated. Even granting that freedom of speech occupies a preferred position in the hierarchy of constitutional values, it does not follow that

1. Contra: Tinker v. DesMoines Independent Community School District, 258 F. Supp. 971 (1966), affirmed by an equally divided court sitting en banc, 383 F. 2d 988 (8th Cir., 1967) (School regulation forbidding the wearing of black arm bands as a protest against Viet Nam war held reasonable even in absence of showing that there is a material or substantial interference with school discipline.) However, the Supreme Court has granted certiorari, 390 U. S. 942, 88 S. Ct. 1050.

it may be exercised at any time, in any manner, on any state-owned property without regard to the primary use to which the property has been dedicated; *cf. Adderly* v. *State of Florida*, 385 U. S. 39 (1966). Despite the First Amendment, speech may be regulated where there is a "clear and present danger" that substantive evil will result. *Schenck* v. *United States*, 249 U. S. 47, 52 (1919). "In each case (courts) must ask whether the gravity of the 'evil', discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." *Dennis* v. *United States*, 341 U. S. 494, 510 (1951) (quoting Judge Hand in the lower court, 183 F. 2d 201, 212).

It is apparent from the face of the complaint here that the minor plaintiffs had engaged in speech on school grounds which amounted to an immediate advocacy of, and incitement to, disregard of school administrative procedures. Particularly in elementary and secondary schools, the state has a compelling interest in maintaining an atmosphere conducive to an orderly program of classroom learning, and to respect for legitimate and necessary administrative rules. "The interest of the state in maintaining an educational system is a compelling one, giving rise to a balancing of First Amendment rights with the duty of the state to further and protect the public school system." *Burnside* v. *Byars*, 363 F. 2d 744, 748 (1966). The speech here, unlike the speech in *Burnside* v. *Byars*, *supra*, and *Tinker* v. *DesMoines Independent Community School District*, *supra*, itself constitutes a direct and substantial threat to the successful operation of the school. Even if it were not directed to an immature audience, its suppression might be justified under the rule of *Dennis* v. *United States*, *supra*. Furthermore, although we are in a period when the rights of the minor vis-a-vis the state are being closely reexamined, cf. *In re Gault*, 387 U. S. 1 (1967), the Supreme Court

has recently affirmed the right of the state to protect its younger citizens from certain forms of speech which would, if the audience were adult, be protected by the First Amendment. *Ginsberg* v. *New York*, 390 U. S. 629 (April 22, 1968.)

Under most circumstances, responsible criticism of school administrative officials is no less protected by the First Amendment than responsible criticism of other state officials. See *Pickering* v. *Board of Education*, ... U. S. .....; 20 L. Ed. 2d 811 (1968). However, where speech takes the form of immediate incitement to disregard of legitimate administrative regulations necessary to orderly maintenance of a public high school system; and where the speech occurs, not on a street or on a public park, where the rights of free speech are virtually absolute, but rather on the very property dedicated to a special public use, the education of younger citizens; and where the speech is directed to an audience which, because of its immaturity, is more likely than an adult audience to react to the detriment of the school system, then it is the opinion of this Court that the interest of the state in maintaining the school system outweighs the protection afforded the speaker by the First Amendment. Since the circumstances surrounding the dissemination of "Grass High" are set forth in the complaint itself, defendants are entitled to judgment on the pleadings as to the Civil Rights Act claim made by plaintiffs here.

III. The State Law Claim.

Plaintiffs' alternative contention, that the defendants acted in excess of their delegated authority is, of course, a non-federal ground in support of the same cause of action. Standing alone, this contention would not support subject matter jurisdiction in the federal courts, since diversity of citizenship is lacking here. When coupled with a genuine federal ground in support of the same cause of action,

however, this alternate contention is within the pendent jurisdiction of this Court. *Hurn* v. *Oursler*, 289 U. S. 238 (1933).

Exercise of pendent jurisdiction is said to be discretionary, and if the federal ground in support of a cause of action is disposed of on the pleadings, the Court in its discretion, may elect to decline further consideration of the non-federal ground. *T. B. Harms* v. *Eliscu*, 339 F. 2d 823 (2d Cir., 1964). However, I will exercise my discretion in favor of deciding the non-federal ground advanced by plaintiffs in support of their cause of action here. Abstention would merely force piecemeal determination of the issues raised here, and would cause further delay in the ultimate outcome of the litigation. Resolution of this alternate issue, whether favorable or unfavorable to plaintiffs, will prevent the necessity of filing another lawsuit in the state courts.

I am persuaded that the Illinois courts have limited their judicial review of the actions of state school boards to an inquiry of whether or not the board's determination was shown to be the result of fraud, corruption, oppression or gross injustice. *Smith* v. *Board of Education of Oak Park & River Forest Tp. High School*, 182 Ill. App. 342 (1914); and that considerable latitude for discretion is left to the boards of education, *Board of Education* v. *Helston*, 32 Ill. App. 300, in making the determination of whether an act constitutes gross misconduct. I hold that the dissemination of "Grass High" under the circumstances alleged, was reasonably found by the Board to constitute "gross misconduct", and that Illinois Revised Statutes, Chapter 122, § 10-22.6 has sufficiently delegated the authority to defendants to make such a finding.

Because the Court finds that the language quoted from the editorial entitled "My Reply" is unprotected by the First Amendment, under the circumstances alleged in the

complaint, and that the minor plaintiffs may reasonably be punished for their conduct in disseminating it to students on school grounds, under the applicable Illinois statute, it will be unnecessary to consider whether certain other language in "Grass High", found to be "inappropriate and indecent" by the School Board, would, if standing alone, be entitled to First Amendment protection under the circumstances; or whether dissemination of a newspaper on high school grounds to high school students, containing only that language, would constitute "gross misconduct." It will also be unnecessary to pass upon the question of whether a statute such as Ill. Rev. Stat. Cr. 122 § 10-22.6, can grant immunity from a federally created cause of action.

For the reasons given, defendants' motion to dismiss must be, and is hereby, allowed.

ENTER:

s/ ALEXANDER J. NAPOLI,
United States District Judge.

Dated: July 19th, 1968.

APPENDIX B.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit

September Term, 1968—April Session, 1969

No. 17190

RAYMOND SCOVILLE, a minor, and MERILL SCOVILLE, as father and next friend; ARTHUR BREEN, a minor, and JERRY BREEN, as father and next friend,

Plaintiffs-Appellants,

vs.

BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204, COUNTY OF WILL, STATE OF ILLINOIS; ARTHUR L. BRUNING, DAVID R. ROSS, HOWARD JOHNSON and CLAYTON WINTERSTEEN,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

September 25, 1969

Before CASTLE, *Chief Judge*, KILEY, *Circuit Judge*, and WISE, *District Judge*.

WISE, *District Judge*. This appeal is taken from an order of the District Court for the Northern District of Illinois dismissing plaintiffs' complaint and action for failure to state a claim upon which relief can be granted. The complaint is based on alleged violations of plaintiffs'

rights under the First and Fourteenth Amendments to the United States Constitution and seeks a declaratory judgment, injunctive relief and money damages. For purposes of review this court accepts as true the factual allegations in the complaint.

On January 15, 1968, plaintiffs, Raymond Scoville and Arthur Breen, seventeen year old juniors at Joliet Central High School, distributed, on the school premises, 60 copies of a publication entitled "Grass High". The 14-page publication, which was prepared off the school premises at plaintiffs' own cost, contained poetry, essays, movie and record reviews and editorials attacking school administrators and procedures. One prominent editorial, entitled "My Reply", was written by Breen in response to a publication of the school administration entitled "Bits of Steel". The relevant portions of the editorial in question read as follows:

> ". . . The pamphlet ["Bits of Steel"] started out with a message from the principal, David Ross. This is logical because the entire pamphlet is supposed to be 'The Principal's Report to Parents.' In this article Ross states why the pamphlet was put out and the purpose it is supposed to accomplish, namely, the improvement of communication between parents and administration. He has got to be kidding. Surely, he realizes that a great majority of these pamphlets are thrown away by the students and in this case that is how it should have been. I urge all students in the future to either refuse to accept or destroy upon acceptance all propaganda that Central's administration publishes.
>
> * * * * *
>
> Next came an article on attendance. There's not much I can say about this one. It simply told the haggered parents the utterly idiotic and asinine procedure that they must go through to assure that their children will be excused for their absences."

Breen's editorial further stated that "our whole system of education with all its arbitrary rules and schedules seems dedicated to nothing but wasting time" and accused the Senior Dean at Joliet Central of having a "sick mind." For purposes of review it must be assumed that the distribution of "Grass High" did not create a disturbance or cause any commotion or disruption of classes at Joliet Central.

For three days after distribution of "Grass High" no action was taken against plaintiffs, but on January 18, 1968 the Senior Dean advised plaintiffs that they would not be permitted to take their final examinations for the fall semester and that further disciplinary action would be forthcoming. On January 22, plaintiffs were suspended for the first five days of the spring semester, but no formal charges were made by the administration. Thereafter, on February 6, plaintiffs' parents received a certified letter from the Superintendent of the Joliet high schools stating that he would recommend to the School Board that plaintiffs be expelled for the remainder of the school year, because:

> "serious misbehavior in the form of public use of objectionable language and the publication and in-school sale of inappropriate statements about school staff members require stern action on our part."

On February 23, 1968, the School Board held a hearing, which neither plaintiffs nor their parents chose to attend, and a resolution was adopted ordering the expulsion of the plaintiffs from school for the remainder of the spring semester. The resolution of expulsion was based on the School Board's determination that the plaintiffs were guilty of "gross disobedience [and] misconduct" within the meaning of the Illinois School Code. Ill. Rev. Stat., Chap. 122, § 10-22.6. Thereafter, plaintiffs were allowed to at-

tend night school at Joliet Central and a day school physics course to enable them to maintain their standing in the junior class. Plaintiffs, however, were required to pay tuition for the night school classes.

On April 17, 1968, plaintiffs filed the instant action against the Joliet school authorities. In their complaint plaintiffs contend that the School Board's expulsion order constituted a violation of their First and Fourteenth Amendment freedoms; and that the School Board exceeded its delegated authority under the laws of the State of Illinois in adopting said expulsion order. Defendants filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted, and on June 19, 1968, said motion was granted. The district court filed a memorandum opinion in support of its order of dismissal holding that:

> "it is apparent from the face of the complaint here that the minor plaintiffs had engaged in speech on school grounds which amounted to an immediate advocacy of, and incitement to, disregard of school administrative procedures."

The court further found that the distribution of "Grass High" constituted a direct and substantial threat to the effective operation of the high school. In conclusion the court held that the School Board had not exceeded its delegated authority under Illinois law.

It is clear that much of the relief originally sought by plaintiffs has been rendered moot by their delay in initiating the original litigation and by the delays involved in this appeal. For example, reinstatement of plaintiffs as full time day school students at Joliet Central is no longer in issue, because plaintiffs have been reinstated as members of the senior class to be graduated in June, 1969. However, the cause is not entirely moot, since plain-

tiffs seek an injunction restraining the Joliet school authorities from communicating to any colleges or potential employers the substance of the events alleged in the complaint and an order to expunge from the records at Joliet Central all evidence of disciplinary action taken against plaintiffs as a result of their involvement in the publication and distribution of "Grass High". In addition plaintiffs seek incidental money damages, primarily with regard to expenses incurred in attending night school.

In considering a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, the facts must be viewed in the light most favorable to the plaintiff. In the instant case, the facts alleged in the complaint, even if entirely true, do not present a claim for judicial relief.

It is clear that the First and Fourteenth Amendments to the United States Constitution protects the rights of students against unreasonable rules and regulations promulgated by school authorities. *Tinker* v. *Des Moines School Dist.*, 393 U. S. 503 (1969). In *Tinker* the Supreme Court determined that the wearing of black arm bands by plaintiff-students to protest the war in Viet Nam was silent expression which did not intrude upon the work of the school or the rights of other students. Thus, the Court held that the disciplinary action taken by the school authorities infringed upon the plaintiff-students' First Amendment rights. In a similar case the Fifth Circuit Court of Appeals held that the wearing of freedom buttons by plaintiff-students did not fall within the class of activities which inherently disrupt the educational process "such as carrying banners, scattering leaflets, and speech making, all of which are protected methods of expression, but all of which have no place in an orderly classroom." *Burnside* v. *Byars*, 363 F. 2d 744, 748 (1966). In the

Burnside case, as in *Tinker*, it was determined that disruption of school activities could not reasonably be anticipated by school officials, and, therefore, the disciplinary action taken against the plaintiff-students was held to have violated their First Amendment rights.

Although the plaintiffs cite the *Tinker* and *Burnside* cases in support of their contentions, the instant case presents an entirely different factual situation. The objectives of the editorial "My Reply" were the incitement of students to ignore accepted school procedures and the condemnation of school officials. Plaintiffs now contend that since their editorial efforts failed to have the immediate effect of disrupting school routine, the school authorities are without power to discipline them. If this court were to accept plaintiffs' contention and carry it to its logical conclusion, it would require a ruling that school authorities are without power to regulate student expression until it disrupts the school's operation as an educational institution. Clearly, the law, as stated in the *Tinker* and *Burnside* cases, does not impose such an unreasonable limitation on the disciplinary powers of school officials.

In the *Tinker* case the Supreme Court stated that a student's First Amendment rights may be limited, if the student's conduct "might reasonably [lead] school authorities to forecast substantial disruption of or material interference with school activities." 393 U. S. at 514. Similarly, in the *Burnside* case the court held that the "interest of the state in maintaining an educational system is a compelling one, giving rise to a balancing of First Amendment rights with the duty of the state to further and protect the public school system." 363 F. 2d at 748. Thus, reasonable action on the part of school officials which is necessary to the maintenance of order and discipline is always permissible, although it may to some degree infringe upon

such basic rights as freedom of speech and freedom of press.

Upon careful consideration of the cited legal principles it is the opinion of this court that the Joliet school authorities acted reasonably in expelling plaintiffs for their participation in the publication and distribution of "Grass High". Unlike the silent or passive forms of expression deemed acceptable in the *Tinker* and *Burnside* cases, the speech used by plaintiffs in the instant case amounted to the immediate advocacy of other students to disregard accepted school procedures. Under the balancing test enunciated in *Burnside* plaintiffs' First Amendment rights were permissibly limited in order to eliminate a direct threat to the orderly operation of Joliet Central High School.

Plaintiffs also contend that defendants acted beyond the scope of their delegated authority under Illinois law. Ill. Rev. Stat., Chap. 122, § 10-22.6. As stated by the trial court, judicial review of the action of a school board is limited to a determination of whether the board's action was the result of "fraud, corruption, oppression or gross injustice." *Smith* v. *Board of Education*, 182 Ill. App. 342, 347 (1914). Furthermore, school boards are given considerable discretion in determining whether action by a student constitutes "gross disobedience or misconduct" within the meaning of the Illinois School Code. *Board of Education* v. *Helston*, 32 Ill. App. 300 (1890). Since it has already been determined that the publication "Grass High" is not entitled to First Amendment protection, it is the opinion of this court that the Joliet school authorities acted reasonably within the board powers of discretion vested in them by the law of Illinois.

In light of the foregoing, we hold that the district court properly dismissed the complaint and the judgment order appealed from is affirmed.

AFFIRMED.

No. 17190

KILEY, *Circuit Judge*, dissenting.

I agree with the majority opinion that much of the relief requested by plaintiffs is now moot, but I respectfully dissent from the decision on the unmooted issue.

The district court held, as its basis for dismissing the complaint, that the conduct of defendants was not an unconstitutional invasion of the plaintiffs' First and Fourteenth Amendment rights. The court thought that plaintiffs' publication of "Grass High" and subsequent sale of the paper to sixty students on school premises at fifteen cents a copy was constitutionally unprotected expression, since it "amounted to an immediate advocacy of, and incitement to, disregard of school administrative procedures" which constituted a direct and substantial threat to the effective operation of the school. This determination was made despite the fact that the court found the distribution did not create a disturbance, caused no commotion and disrupted no classes. The court also found that the penalty imposed on plaintiffs' "misconduct" was justified as a proper exercise of defendants discretion under the Illinois statute.

The district court concluded that the complaint did not state a claim upon which relief could be granted. The issue before this court is the validity of that conclusion based upon the essential findings. In my opinion the district court's conclusion is erroneous.

At the time "Grass High" was published there was no express standard guiding the publication and distribution of student writing. The Illinois statute delegated to defendants the power to suspend or expel "pupils guilty of disobedience or misconduct." The standard of "misconduct" was applied in the disciplinary hearing which fol-

lowed publication of "Grass High" and which resulted in the penalty imposed on plaintiffs. The portion of that penalty pertinent to the present consideration of this case is the recital in plaintiffs' school records of their "misconduct" and the disciplinary action. The plaintiffs' suit sought, and the district court denied, entry of an order directing that this recital in plaintiffs' records be expunged.

The majority opinion decides that since the district court did not err in concluding that plaintiffs' conduct was not protected activity under the Constitution, it therefore follows that such conduct was "misconduct" for which the penalties imposed were within the defendants' statutory power and discretion.

It is clear that the Supreme Court's decision in *Tinker*, and the Fifth Circuit decisions in *Burnside* and in *Blackwell v. Board of Education*, 363 F. 2d 749 (5th Cir. 1966), provide that the First and Fourteenth Amendments extend their protection of free expression to students in school. It is true that the student conduct in those cases was activity of a different sort than that before us; yet the constitutional principles enunciated are the same, although applied in favor of the students' conduct in *Tinker* and *Burnside* and against their conduct in *Blackwell*.

The majority here states the principles of decision in those cases correctly. My difficulty with the majority's opinion is that while quoting the essential balancing rule from the *Burnside* opinion, it overlooks the failure of the district court to apply that rule. The district court here did not attempt to balance the competing interests of plaintiffs in the free exercise of their constitutional rights against Illinois interest in conducting and maintaining an orderly, effective school system. The district court's decision was made on the basis that the complaint "on its face" was sufficient to show that the state interest weighed so heavily

in the scale that it was unnecessary to take any evidence on the factors needed in striking a balance between the competing interests. In *Tinker*, *Burnside* and *Blackwell* evidence was taken and the appropriate balance struck on an evidentiary basis.

The necessity of using effective disciplinary measures in maintaining and conducting a school is universally recognized. The law requires that the measures adopted be reasonably related to the state interest, and thereby implicitly recognizes that the students should be protected against invasion of their constitutional rights by measures which unduly stifle or chill their imaginations, intellects and wills. The state has an interest in the production of well-trained intellects by its educational institutions, and a constructively critical stance is the mark of such an intellect. Schools themselves are increasingly accepting student criticism of school policies as a useful and worthwhile influence in the administration of educational systems.

The column entitled "My Reply" in "Grass High" is critical of the Dean's disciplinary policies. There should not be much cause for alarm about that criticism. However, the column also attributed a "sick mind" to the Dean. This reflects a disrespectful, tasteless attitude toward authority. Yet, does the publication of that accusation to sixty students in class, with approval of teachers, justify, without more, the *post facto* application of a standard under which the students' right of free expression may be invaded by penalty and their educational future clouded by an unpurged school record reflecting "misconduct"? This question must be answered by the district court, by an application of the balancing of interests test discussed above. In striking the appropriate balance, the district court should take and consider evidence as to such points

as the size of the student body, the age of the students to whom "Grass High" was sold, and the effect of the publication on the conduct of the students to whom it was sold and upon the order and efficiency of the administration of the school.

I would reverse and remand for an evidentiary hearing.

APPENDIX C.

IN THE UNITED STATES COURT OF APPEALS

for the Seventh Circuit.

No. 17190 September Term, 1969 September Session, 1969

RAYMOND SCOVILLE, a minor, and MERRILL SCOVILLE, as father and next friend; ARTHUR BREEN, a minor, and JERRY BREEN, as father and next friend,
Plaintiffs-Appellants,
vs.
BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204, COUNTY OF WILL, STATE OF ILLINOIS; ARTHUR L. BRUNIG, DAVID R. ROSS, HOWARD JOHNSON and CLAYTON WINTERSTEEN,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

April 1, 1970

Before SWYGERT, *Chief Judge*, CASTLE, *Senior Circuit Judge*, KILEY, FAIRCHILD, CUMMINGS and KERNER, *Circuit Judges, en banc.*

KILEY, Circuit Judge. The plaintiffs, minors, were expelled from high school after writing, off the school premises, a publication which was distributed in school and which contained, among other things, material critical

of school policies and authorities. This civil rights action was brought for declaratory judgment, injunctive relief, and damages,[1] alleging violation of First and Fourteenth Amendment rights, as well as an unconstitutional application of an Illinois statute. The district court dismissed the suit for failure to state a claim upon which relief could be granted. A panel of this court, in an opinion (one judge dissenting) issued September 25, 1969, affirmed the district court's judgment dismissing the complaint. Subsequently, this court granted plaintiffs' petition for rehearing *en banc*. We now reverse the district court's judgment and remand for further proceedings.

The plaintiffs are Raymond Scoville and Arthur Breen, students at Joliet Central High School, one of three high schools administered by the defendant Board of Education. Scoville was editor and publisher, and Breen senior editor, of the publication "Grass High." They wrote the pertinent material. "Grass High" is a publication of fourteen pages containing poetry, essays, movie and record reviews, and a critical editorial. Sixty copies were distributed to faculty and students at a price of fifteen cents per copy.

On January 18, 1968, three days after "Grass High" was sold in the school, the dean advised plaintiffs that they could not take their fall semester examinations. Four days thereafter plaintiffs were suspended for a period of five days. Nine days after that Scoville was removed as editor of the school paper, and both he and Breen were deprived of further participation in school debating activities.

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1. The period of expulsion has ended and plaintiffs were readmitted to Joliet Central High School as seniors for the school year 1969-70. This fact renders moot the question of injunctive relief against the Board of Education's order. Remaining are the questions of declaratory judgment, injunctive relief with respect to restraining defendants from sending information of the expulsion to colleges and prospective employers of plaintiffs, and with respect to expunging the expulsions from the school record.

The dean then sent a report to the superintendent of the high schools with a recommendation of expulsion for the remainder of the school year. The superintendent wrote the parents of plaintiffs that he would present the report, together with the recommendation, to the Board of Education at its next meeting. He invited the parents to be present. Scoville's mother wrote a letter to the Board (plaintiffs' Exhibit 2, appended to the complaint) expressing plaintiffs' sorrow for the trouble they had caused, stating that they had learned a lesson, that they were worried and upset about possible interruption in their education and that the parents thought the boys had already been adequately punished. Neither plaintiffs nor their parents attended the Board meeting. The Board expelled plaintiffs from the day classes for the second semester, by virtue of the Board's authority, under ILL. REV. STAT. Ch. 122, Sec. 10-22.6 (1967), upon a determination that they were guilty of "gross disobedience [and] misconduct." The Board permitted them to attend, on a probationary basis, a day class in physics, and night school at Joliet Central. The suit before us followed.

Upon defendants' motion to dismiss, the district court decided that the complaint, on its face, alleged facts which "amounted to an immediate advocacy of, and incitement to, disregard of school administrative procedures," especially because the publication was directed to an immature audience. In other words, the court implicitly applied the clear and present danger test, finding that the distribution constituted a direct and substantial threat to the effective operation of the high school. At no time, either before the Board of Education or in the district court, was the expulsion of the plaintiffs justified on grounds other than the objectionable content of the publication. The Board has not objected to the place, time or manner of distribution. The court found and it is not disputed that plaintiffs'

conduct did not cause any commotion or disruption of classes.

No charge was made that the publication was libelous, and the district court felt it unnecessary to consider whether the language in "Grass High" labeled as "inappropriate and indecent" by the Board could be suppressed as obscene.[2] The court thought that the interest in maintaining its school system outweighed the private interest of the plaintiffs in writing and publishing "Grass High." The basis of the court's decision was an editorial entitled "My Reply" (a copy of which is appended to this opinion) which—after criticizing the school's pamphlet, "Bits of Steel," addressed to parents—urged the students not to accept "in the future," for delivery to parents, any "propaganda" issued by the school, and to destroy it if accepted.

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2. The Board found sufficient to justify expulsion that the action of plaintiffs

> (1) constitutes a public use of inappropriate and indecent language, (2) constitutes a violation of established rules of said school district, (3) constitutes a disregard of and contempt for the authorities charged with the administration of said Central Campus and said school district, (4) encourages the disregard and disobedience of orders promulgated by the duly constituted authorities of said Central Campus and said school district, (5) involves other students as parties to the preparation and distribution of the aforesaid writing who were in fact not parties thereto.

Board resolution, plaintiffs' Exhibit 3, appended to the complaint.

There is a risk with respect to (4) above. "But our Constitution says we must take this risk." *Tinker v. Des Moines School District*, 393 U. S. 503, 508 (1969).

The Board relied upon an unwritten policy which was presumably applied ex post facto to the plaintiffs.

I.

Plaintiffs contend that the expulsion order violated their First and Fourteenth Amendment freedoms. The same cases are cited by plaintiffs and defendants in support of their arguments on this contention. The authoritative decision, pertinent to the important[3] issue before us, is *Tinker* v. *Des Moines School District*, 393 U. S. 503 (1969).[4] *Tinker* is a high school "arm band" case, but its rule is admittedly dispositive of the case before us.[5]

The *Tinker* rule narrows the question before us to whether the writing of "Grass High" and its sale in school to sixty students and faculty members could "reaonably have led [the Board] to *forecast* substantial disruption of or material interference with school activities . . . or

3. "High school underground newspapers are spreading like wildfire in the Chicago area." *High School Students Are Rushing into Print—and Court*, Nation's Schools, Jan. 1969, p. 30. See also Nahmod, *Black Arm Bands and Underground Newspapers: Freedom of Speech in the Public Schools*, 51 Chicago Bar Record 144 (Dec. 1969).

4. The Supreme Court decision in *Tinker* was not filed until after the district court decided the case before us and after plaintiffs' original brief was filed. *Tinker* was cited and discussed in defendants' brief and in plaintiffs' reply brief.

5. The closest case factually which gives support to plaintiffs is the university publication case of *Dickey v. Alabama State Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967)—also decided before *Tinker*. The fact that it involved a university is of no importance; since the relevant principles and rules apply generally to both high schools and universities.

We think the district court should not have been too concerned over the immaturity of the student readers of "Grass High." Professor Charles Alan Wright has noted, however: "It is likely that the tolerable limit for student expression in high school should be narrower than at college or university level." Wright, *The Constitution Has Come to the Campus*, 22 VAND. L. REV. 1052, 1053 (1969).

intru[sion] into the lives of others.'"[6] *Tinker* v. *Des Moines School District*, 393 U. S. at 514. (Emphasis added.) We hold that the district court erred in deciding that the complaint "on its face" disclosed a clear and present danger justifying defendants' "forecast" of the harmful consequences referred to in the *Tinker* rule.

Tinker announces the principles which underlie our holding: High school students are persons entitled to First and Fourteenth Amendment protections. States and school officials have "comprehensive authority" to prescribe and control conduct in the schools through reasonable rules consistent with fundamental constitutional safeguards. Where rules infringe upon freedom of expression, the school officials have the burden of showing justification. See also *Burnside* v. *Byars*, 363 F. 2d 744 (5th Cir. 1966); *Blackwell* v. *Issaquena Co. Board of Education*, 363 F. 2d 749 (5th Cir. 1966); *Soglin* v. *Kaufman*, No. 17427 (7th Cir. Oct. 24, 1969); *Breen* v. *Kahl*, Nos. 17552, 17553 (7th Cir. Dec. 2, 1969); *Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967); *Jones* v. *State Board of Education*, 279 F. Supp. 190 (M.D. Tenn. 1968). There is no dispute here about the applicable principles or decisional rules.

Plaintiffs' freedom of expression was infringed by the Board's action, and defendants had the burden of showing that the action was taken upon a reasonable forecast of a substantial disruption of school activity. No reasonable inference of such a showing can be drawn from the complaint which merely alleges the facts recited in the beginning of this opinion. The criticism of the defendants' dis-

6. This "forecast" rule is an extension of the "substantial disruption or material interference" rule applied in the leading decision of *Burnside* v. *Byars*, 363 F. 2d 744 (5th Cir. 1966), in favor of students, and in *Blackwell* v. *Issaquena Co. Board of Education*, 363 F. 2d 749 (5th Cir. 1966), against students' conduct.

ciplinary policies and the mere publication of that criticism to sixty students and faculty members leaves no room for reasonable inference justifying the Board's action. While recognizing the need of effective discipline[7] in operating schools, the law requires that the school rules be related to the state interest in the production of well-trained intellects with constructive critical stances, lest students' imaginations, intellects and wills be unduly stifled or chilled. Schools are increasingly accepting student criticism as a worthwhile influence in school administration.[8]

Absent an affirmative showing by the defendants, the district court, faced with the motion to dismiss, inferred from the admitted facts in plaintiffs' complaint and the presented exhibits that the Board action was justified. However, the district court had no factual basis for, and made no meaningful application of, the proper rule of balancing the private interests of plaintiffs' free expression against the state's interest in furthering the public school system. *Burnside* v. *Byars*, 363 F. 2d at 748. No evidence was taken, for example, to show whether the classroom sales were approved by the teachers, as alleged; of the number of students in the school; of the ages of those to whom "Grass High" was sold; of what the impact was on those who bought "Grass High"; or of the range of modern reading material available to or required of the

7. Ill-considered suppression carries its own dangers. For example, in *Blackwell* v. *Issaquena Co. Board of Education*, 363 F. 2d at 751, it is said that three students wore the challenged freedom buttons on Friday. They were taken to the principal who ordered the buttons removed. The three refused to do so and were suspended. On Monday 150 students wore the buttons.

8. The Harvard Law Review states "[R]esponsible student criticism of university officials is socially valuable since in many instances the students are peculiarly expert in campus issues and possess a unique perspective on matters of school policy." *Developments in the Law-Academic Freedom*, 81 HARV. L. REV. 1045, 1130 (1968). Prudent criticism by seventeen-year-old high school juniors may also have value.

students in the school library. That plaintiffs may have intended their criticism to substantially disrupt or materially interfere with the enforcement of school policies is of no significance per se under the *Tinker* test.

The "Grass High" editorial imputing a "sick mind" to the dean reflects a disrespectful and tasteless attitude toward authority. Yet does that imputation to sixty students and faculty members, without more, justify a "forecast" of substantial disruption or material interference with the school policies or invade the rights of others? We think not. The reference undoubtedly offended and displeased the dean. But mere "expression of [the students'] feelings with which [school officials] do not wish to contend" (*Tinker v. Des Moines School District*, 393 U. S. at 511; *Burnside v. Byars*, 363 F. 2d at 749) is not the showing required by the *Tinker* test to justify expulsion.

Finally, there is the "Grass High" random statement. "Oral sex may prevent tooth decay." This attempt to amuse comes as a shock to an older generation. But today's students in high school are not insulated from the shocking but legally accepted language used by demonstrators and protestors in streets and on campuses and by authors of best-selling modern literature. A hearing might even disclose that high school libraries contain literature which would lead students to believe the statement made in "Grass High" was unobjectionable.[9]

We believe the discussion above makes it clear, on the basis of the admitted facts and exhibits, that the Board could not have reasonably forecast that the publication and distribution of this paper to the students would substantially disrupt or materially interfere with school procedures.

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9. See Nahmod, *Black Arm Bands and Underground Newspapers: Freedom of Speech in the Public Schools*, 51 Chicago Bar Record, 144, 152 n. 4 (Dec. 1969).

II.

The sole authority for the Board's action is Ill. Rev. Stat. Ch. 122, Sec. 10-22.6 (1967), which gives the School Board the power "to expel pupils guilty of gross disobedience or misconduct." In view of our conclusion that the complaint "on its face" discloses an unjustified invasion of plaintiffs' First and Fourteenth Amendment rights, it follows that we agree with plaintiffs that the Board applied the Illinois statute in an unconstitutional manner.

We conclude that absent an evidentiary showing, and an appropriate balancing of the evidence by the district court to determine whether the Board was justified in a "forcast" of the disruption and interference, as required under *Tinker*, plaintiffs are entitled to the declaratory judgment, injunctive and damage relief sought.

The cause is remanded for further proceedings.

REVERSED AND REMANDED.

APPENDIX.

MY REPLY.

Recently, we students at Joliet Central were subjected to a pamphlet called "Bits Of Steel." This occurence took place a few weeks before the Christmas vacation. The reason why I have not expressed my opinions on this pamphlet before now is simple: being familiar with the J-HI Journal at Central, I knew that they would not print my views on the subject.

In my critique of his pamphlet I shall try to follow the same order in which the articles were presented.

The pamphlet started with a message from the principal, David Ross. This is logical because the entire pamphlet is supposed to be "The Principal's Report to Parents." In this article Ross states why the pamphlet was put out and the purpose it is supposed to accomplish, namely, the improvement of communication between parents and administration. He has to be kidding. Surely he realizes that a great majority of these pamphlets are thrown away by the students, and in this case that is how it should have been. I urge all students in the future to either refuse to accept or destroy upon acceptance all propaganda that Central's administration publishes.

The second article told about the Human Relations committee which we have here at Central. It told why the committee was assembled and what its purpose is. It also listed the members of the committee who attend school here at Central. All-in-all this was probably the best article in the whole pamphlet, but never fear the adminis-

tration defeated its own purpose in the next article which was a racial breakdown of the Central campus. As far as I could see this article served no practical purpose. By any chance did the administration feel that such a breakdown would improve racial relations? I think not. This article had such statements as: Spanish American students were included with the white students. Well, wasn't that nice of the administration. In other words, the only difference noted was whether the student was white or Negro.

This was followed by an article called "Did you Know?" This was, supposedly, to inform the parents of certain activities. Intertwined throughout it were numerous rules that the parents were to see their children obeyed. Quite ridiculous.

Next came an article on attendance. There's not much I can say about this one. It simply told the haggered parents the utterly idiotic and asinine procedure that they must go through to asure that their children will be excused for their absences.

Question from the parents was the next in the line of articles. This consisted of a set of three questions written by the administration and then answered by the administration. The first question was designed to inform the reader about the background of the new superintendent. The second was about the paperbacks which were placed in the dean's office. They state that the books were put there "so that your sons and daughters may read while they wait. The hope is that no moment for learning will be lost." Boy, this is a laugh. Our whole system of education with all its arbitrary rules and schedules seems dedicated to nothing but wasting time. The last question concerned the Wednesday One-ins. It was followed by a quote: "Sometimes we, parents and schoolmen must seem cruel in order to be kind to the children placed in our care."

Do you think that the administration is trying to tell us something about the true purpose of the Wednesday Queins?

The next gem we came across was from our beloved senior dean. Our senior dean seems to feel that the only duty of a dean or parent is to be the administrator of some type of punishment. A dean should help or try to understand a student instead of merely punishing him. Our senior dean makes several interesting statements such as, "Proper attitudes must be part of our lives and the lives of our children." I believe that a person should be allowed to mold his own attitudes toward life, as long as they are not radically anti-social, without extensive interference from persons on the outside, especially these who are unqualified in such fields. Another interesting statement that he makes is "Therefore let us not cheat our children, our precious gifts from God, by neglecting to discipline them!" It is my opinion that a statement such as this is the product of a sick mind. Our senior dean because of his position of authority over a large group of young adults poses a threat to our community. Should a mind whose only thought revolves around an act of discipline be allowed to exert influence over the young minds of our community? I think not. I would urge the Board of Education to request that this dean amend his thinking or resign. The man in the dean's position must be qualified to the extent that his concern is to help the students rather than discipline or punish them.

This pamphlet also contained an article from the freshman dean. I should like to say that Dean Engers, in his article, shows a great deal of promise. He appears to be genuinely interested in the problems of the students entrusted to him. All I can say to him is to keep up the good work.

The last thing of any interest in the pamphlet was about the despicable and disgusting detention policy at Central. I think most students feel the same way as I about this policy. Therefore I will not even go into it.

In the whole pamphlet I could see only one really bright side. We were not subjected to an article written by Mr. Dickelman.

Senior Editor
Grass High

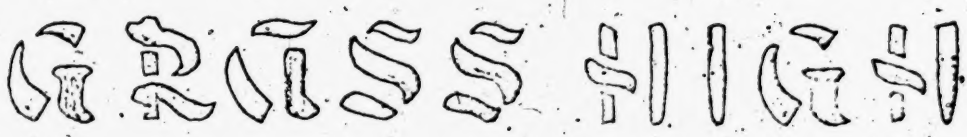
No. 17190

CASTLE, *Senior Circuit Judge*, dissenting. I find myself constrained to disagree with the majority's conclusion that *Tinker* v. *Des Moines School District*, 393 U. S. 503, and the other cases relied upon, dictate that in the circumstances of this particular case an evidentiary hearing was a prerequisite to the District Court's implicit finding and conclusion that the disciplinary action taken by the school board was justified. Here, there was admitted action by the minor plaintiffs, through the medium of their publication "Grass High", calling upon their fellow students to flaunt the school's administrative procedure by destroying, rather than delivering to their parents, materials delivered to the students for the latter purpose.

I perceive no occasion here for the court to hear evidence bearing on the actual or likely success or effect of such advocacy as a prerequisite to a "balancing of the private interests" of these adolescent plaintiffs' "free expression" against the state's interest in conducting an efficient system of public schools. In my view, plaintiffs' advocacy of disregard of the school's procedure carried with it an inherent threat to the effective operation of a method the school authorities had a right to utilize for the purpose of communicating with the parents of students.

I would affirm the judgment of the District Court.

APPENDIX D.



INSIDE!

STORIES

FOLLIS GALORE!

ORDERS AS YOU HAVE [illegible]

GRASS AMONG THE [illegible]

AND...

THE HEAT DIES

BEAUTY

IMAGERY!

[illegible]

TRUTH

ZAP ... LOVE

... so COME — COME IN. We're open all hours.

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Literary Director — Mark Heaton, Editorial Assistant — Ernie Juhant, Art Director — David Cotter, Events Editor — Mike Reilly

Our thanks to Jerry, Beverly, Carla, Kathy, Brian and Douglas.

Credits: Desert Scene, William Jay Smith, The New Republic; Fool On The Hill, Lennon and McCartney; Picture of President Lyndon Johnson courtesy of Citizens For Kennedy; "Teen Morals," Maria Barker, The Sun-Times Of Chicago.

GRASS HIGH is dedicated to Freedom, The Good Life and The Good People.

This Paper Began as a suggestion, grew to an idea, then a warning, then a reality. It began because of the lack of creative and editorial freedom in the available media. GH is not a NEWSpaper and we can promise that it will never degenerate into an average school paper for two reasons: one, we are not connected with any school; and two, GH is going to print the truth. We are not afraid to offend the offendable.

— The Editor

MY REPLY

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DESERT SCENE

One day a derelict dromedary
Hailed an unwary cassowary:

"I'll bet the skin right off this hump
That you can't swallow that one lump

Of redolent radioactive salt
And not bring life to a sudden halt."

The wild bird, avid to be victor,
Wolfed down the stuff like a boa constrictor.

Looped and wobbled, wheeled and spun,
A mad, abandoned cyclotron,

Then sank to the sand in a wasted heap
And lapsed into a lasting sleep.

Having ingested there and then
More strontium-90 than most men,

Who would not dream of being tricked
By such a devious derelict.

William Jay Smith

[illegible] publication.

The second article told about the Human Relations committee which we have here at Central. It told why the committee was assembled and what its purpose is. It also listed the members of the committee who attend school here at Central. All-in-all this was probably the best article in the whole pamphlet, but never fear the administration defeated its own purpose in the next article which was a racial breakdown of the Central campus. As far as I could see this article served no practical purpose. By any chance did the administration feel that such a breakdown would improve racial relations? I think not. This article had such statements as: Spanish American students were included with the white students. Well, wasn't that nice of the administration. In other words, the only difference noted was whether the student was white or Negro.

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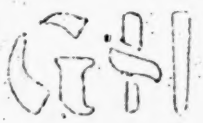
here it is.

All you lucky people: GRASS HIGH. Partake.

Enjoy. Be Free!

If you have any complaints, threats, lawsuits, objections, etc. to make, just remember, our uncle Hubert won't like that, but send them along anyway to our circulation department.

If you wish to disagree with anything you read in



that is your right, unintelligent as your disagreement may be.

(continued from p. 5)

and then answered by the administration. The first question was designed to inform the reader about the background of the new superintendent. The second was about the paperbacks which were placed in the dean's office. They state that the books were put there "so that your sons and daughters may read while they wait. The point is that no comment for [illegible] will be made." Boy, this is rough. Our whole system of education with all its arbitrary rules and scheduled [illegible] designed to do nothing but waste time. The last question [illegible] followed by a quote: "We realize [illegible] parents and [illegible] must seem cruel in order to be what is the children placed in our care." Do you think that the administration is trying to tell us something about the true purpose of the Wednesday Que-ins?

The next gem to come across was from our beloved senior dean. Our senior dean seems to feel that the only duty of a dean or parent is to be the administrator of some type of punishment. A dean should help or try to understand a student instead of merely punishing him. Our senior dean makes several interesting statements such as, "proper attitudes must be part of our lives and the lives of our children." I believe that a person should be allowed to mold his own attitudes toward life, as long as they are not radically anti-social, without excessive interference from persons on the outside, especially those who are unqualified in such fields.

continued on page 12

GUESS WHO THE HECK

FORGET HER

by Ernest Jehant
Yolanda's brother

t her face, forget her form;
t her kiss and warm embrace.
t the girl you once knew;
er no there's someone new.

t the fun you once had;
t the fact that she once cared.
t the times you spent together;
ter no she's gone forever.

t her when they play your song;
t she cried the whole night
ong.
t how close you two once were;
ber now you've chosen her.

t she memorized your walk;
t the way she used to talk.
t the things she used to say;
ber now she's gone away.

t the times you used to phone;
t the night you two were alone.
t she was your whole wide
orld.
ber now there's another guy.

t her gentle smile so gay;
t you saw her again today.
t the things you used to do;
ber no he likes her too.

t the thrill when she walked
ay;
t the time you made her cry.
t the way you spoke her name;
tter or it's not the same.

t you used to hold her hand;
t the sweetness, if you can.
t the time you were a fool.
ber now you're not so blue.

t that she was your first love;
t that it might take help from
love.
t that she was your best friend;
mber or he's here till the end.

Forget the time that went so fast;
Forget the love that now has passed.
Forget the girl she'd have you
never;
Remember now she's gone forever.

M. M.

ALBUMS TODAY

From the moment the anonymous voice beckons you to "Roll up for the Mystery Tour" you will absorbedly be fascinated by one of the finest LP's ever to be released by Great Britain's best known export, The Beatles. Their artistry reaches yet another peak as they cast the magical spell in their latest Capitol offering, Magical Mystery Tour which, by the way, is the soundtract of a television special they made last year. It will be released in this area shortly. Two of the best songs are "Fool On The Hill" which exerts a mood of tranquility and innocence while telling an unusual story, and "I Am The Walrus" a highly satirical and humorous piece that captivates through the use of Lennon's haunting voice. In addition to these cuts are the title song; "Flying"; "Blue Jay Way" Harrison's contribution with a distinctively Eastern aura; and "Your Mother Should Know"; plus "Hello Goodbye" and four others.

continued p. 7

oral sex may prevent
tooth decay

HOW TEEN MORALS COMPARE

Have we lost our morals? Lessene: them? Are we at fault? Or are our parents? Could our moral standards be too strict or harsh for today's world?

No, not too harsh but they are dealt with differently. Newspapers, books, magazines, all record of fact from 25 years ago show the appeal to the public through patriotic senses.

Few people splurred on the luxuries of life. The emphasis was "save, invest, conserve." Much of the entertainment and literature enforced the idea of patriotism, loyalty and wholesomeness.

People were busy with wartime activities. Old and young alike had jobs. This "duty" permeated every phase of life. A certain amount of strictness was needed. Budgets were maintained, necessarily so. Home life and the upbringing was solid. Business demands were for the "tough" type of person. Often, even one's time was carefully planned.

The youth of this time were restricted to the home or disciplined in the armed forces. These teenagers went from Post-Depression times into the war. Although, as young adults, they promised to give their "kids" what they didn't have, the rapid progress of the world and their restricted development were opposing forces.

Today is different from 25 years ago. Public appeal is no longer directed to the patriotic sense of man. There is no tall, thin, white bearded man saying, "Save; Buy Bonds." Now we have some short, loud-mouthed announcer shout, "Be the first kid on your block to have..." Or, more subtly, some slinky, sexy blond whispers, "Prove you are a man, buy..." Appeal, once strict and serious, now is sensual and sexual. Instead of a heroic soldier for an ideal, we are handed a sneaky spy. Facets of life once given in "talks" are headline news.

Along with the freedom of a nation, the freedom of knowledge is evident. Teens are not slipping morally. Situations similar to those of a generation ago are today talked about and handled in a new light. Not one of secrecy but one of investigation and the search for learning.

(continued from p. 6)

Fine as this album may be it doesn't quite attain the heights of its multi-million dollar predecessor, Sgt. Pepper's Lonely Hearts Club Band. Nonetheless, the Mystery Tour is an outstanding musical achievement and will extend of the Beatles as kings of today's musical world.

A few other albums most worthy of your attention are: [illegible] by the Rolling Stones on London. This is a somewhat new style for the, a departure from their hard-rock of old and the softer style of between The Buttons. After hearing [illegible] by the [illegible] on Dot; [illegible] Ian's For All The Seasons Of Your Mind on Verve; the Young Senior Volunteer Band which includes their hit different Drum; and perhaps the best of all, A Gift From A Flower To A Garden which contains a few of the finest pieces ever done. One especially is well done, that's Under The Greenwood Tree, words by Shakespeare. The album by Donovan who's got to be the best writer alive. The album's a two record set with twenty-two song, and it's on Epic.

ALL CHARACTERS IN THE FICTION AND SEMI-FICTION THAT APPEARS IN GRASS HIGH ARE FICTITIOUS AND ANY RESEMBLANCE TO ANY ONE ELSE ISN'T INTENDED

from ATOF

the Sacred MOUNT

TO TAKE AWAY MY LAST RITES

We have the RIGHT to freedom speech, freedom of religion, edom of thought and creative ression, and freedom of nbly, a right to privacy, and ess to dissent --- in short we the right to free individual fulness. Our country is not t because it gives us these hts, for it does not. These are ately inherent rights. It is t because it takes steps to ure, to protect, and to safe- d them. But there are forces ing away at our basic rights; ding; endangering them --- the ence of the many government and -governmental structures in is country, from Hershey's con- iption, and police wiretapping the student drugs and grooming ies in the schools.

Most of the troubles of this rld are caused by well meaning n who try to regulate the lives others. They often say they're ying to protect society, but ciety is composed of individuals, d if the rights of every indi- dual are protected then the hts of society will be secure.

Too often, people who are not e everyone else, who believe fferently, who dissent with pre- nt policies are called unpatri- ic, un-American trouble-makers. y are none of these things. ey are more truly Americans than ose who conform to the mediocr- ty of the stereotype. For to be fferent is to be unusual, and unusual is often to be better.

It is those who call another un-American who can be the danger. Un-American, in fact, has become a dirty word, yet 95% of the world is not American. There is no set pattern for an American, and anyone who thinks there is is a fool. America has traditionally been a country of mixed people: different people; people of varied backgrounds, beliefs, races, beliefs and loves; with the only common factor: freedom to do what they want, to live as they wish.

What strengthens this country is that it has fought to stop the usurption of the individual's rights. It has organizations like the ACLU and the Supreme Court which attempt to counter the injustices that so befall the innocent, to resist the eroding forces.

Who or what is the government? The government is neither above nor separate from the people. It is the people. You and I are the government. The officials act for us (supposedly to our benefit), but still, we are the source of power. We as a people have perhaps the greatest control over our destinies of all other peoples in the world.

We have the right to freedom of individual experience, perhaps it is because of this that we are the richest country on earth. Above wealth though, we should cherish this right, and always realize that the only mortal sin is the infringement upon another's rights. We all have the same account of equality. But now, ask yourself how often you have taken advantage of the right to freedom of experience. The only thing worse than not having something is having it and never using it.

CREATIVE APATHY LIVES

MUSIC

Some of you may wonder just who the GOOD PEOPLE are. Some of you know.

Because the BEATLES can do no wrong we choose to let their lyrics explain.

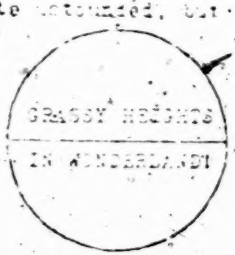
THE FOOL ON THE HILL

Day after day, alone on the hill, the man with a foolish grin is perfectly still
But nobody wants to know him they can see
He's just a fool and no matter how he tries
he'll never
an answer
But the fool on the hill sees the sun going down
And the eyes in his head see the world spinning round
Well on the way, head in a cloud, the man of a thousand voices talking perfectly loud
But nobody ever hears him or the sound he appears to make and he never seems to notice
But the fool on the hill sees the sun going down
And the eyes in his head see the world spinning round.
And nobody seems to like him they can tell what he wants to do
And he never shows his feelings but the fool on the hill
Sees the sun going down and the eyes in his head see the world spinning round
He never listens to them He knows that they're the fools
They don't like him
The fool on the Hill sees the sun going down
And the eyes in his head see the world spinning round.

Announcing the first annual GOOD MUSIC POLL results to be printed in the next issue of GP
Categories Best Group Best Singer Best Singer Best Solo Best Female Singer Best Solo Song Best Album
If you wish to participate in the voting send $7.00 along with your ballot to P. 925 Oakland Ave. Joliet, Illinois.

---

once upon a time in the far away land of Connecticut on a bright and glorious day, a young man walked through the great, wooded countryside. He entered a clearing, partly encircled by the thick woods but opening on the far side to a sharp decline. In the very center of the clearing, framed by the trees was an extraordinarily large and apparently unattached balloon of bright multi-colored hues. The balloon, it was one of the old observation balloons with a basket underneath, secured to the ground by ropes. The young man was quite astonished, but be-



ing of an inquisitive mind he slowly approached and gingerly climbed inside. (Silly Boy) The jostling effect caused one of the frayed ropes to snap, the added strain pulling the pegs loose at their stakes. The young man was knocked to the floor of the carriage and unconsciousness. The day or days went by and he awoke to find himself sprawled at the bottom of the carriage which was swaying gently a few inches above the ground. The balloon was caught by the branches of a very old and very un-connecticut-like tree.

continued p 14

THE CAT LINE

The rumour has been circulating that one of the beloved deans at Central is a little strange and kind of funny. The question has also been raised as to whether he should be allowed to continue working in this district.

Although we have some doubts about this unauthenticated rumour, and while we do not condone those who spread it, we certainly support the dean's right and attempts to be an individual. If he chooses to be that type of individual it is entirely up to him, and is no other's business.

Of course, we realize that there are many of these people, perhaps even amongst the faculties of the several high school in Joliet. We do feel, however, that they are not as numerous as many of them would have us believe, and that the situation is hardly one for concern.

In such a case as this it is understandable how the ignorant and unenlightened can fear, dislike and try to destroy the unusual, but the fact of existance in itself is not reason for censure.

Above all, we believe that it is morally wrong to persecute a man, be he dean or not, for his personal beliefs or desires, providing they do not harm others.

The GH staff had a wild bash at the Imperial Wizard's house on New Year's Eve. They sat and imbibed in hopes that Saint Timothy soon would return, and thank God he did.

Generally it was decided among those epicures that GUNS DON'T KILL PEOPLE, PEOPLE KILL PEOPLE. They at once asked the graybeard to give reason. "Mad," he answered holographically.



THIS IS THE SHOE THAT LAUNCHED A THOUSAND SHIPS

and 10,000 planes and 500 000 men

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Send your contributions now to

NHS Publications
656 Rose Street
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We'll use the cash you send in our ever continuing fight against the

BIG FACES.

GRASS OF THE MIND

" THE TELEPHONE POLE HOLE DIGGER "

The day is coming when I am going to jump off of a bridge.
My life is done. The world was won.
But the tides reversed. I'm falling from the ridge.
For it is now lost, and to pay the cost means fighting the infinite sum.
Too much, too much, too much.
I think I'd rather run.

Overwhelmed, engulfed and overcome, I guess it's time to bury some
Of the mistakes. It's time to take
A good, last look. My mind is slowly going numb.
Where am I here when no one's near enough for my own sake?
Too much, too much, too much
For me to now retake.

HUMANITY

The law isn't like it once was before
When legalized killings took place by the score.
A quick trial was held and emotions were hot,
And then they would hang him whether guilty or not.
But as time went on and men became more just,
They had for death, soon lost their lust.
For they had invented a thing better by far,
And didn't the image of mankind so mar.
A machine which in one small gasp would kill
By the means of some acid and a small rounded pill.
To some people this seemed a terrible death.
To have a man die who was gasping for breath.
That one gasp should make him an eternal sleeper,
And besides, we all know electricity's CHEAPER.

AGB

PYROPHOBE

Oh, did I get burned — you wouldn't believe,
Caught on fire and singed my sleeves.

That ought to teach me to reach in there.
Man, was I dumb to think they'd care.

So, now I know not to mess around,
For it was pride that hurt,
And faith that died deep down inside when I got burnt.

BRANDOLION

The white, rounded, glistening, bleak, barren dome

To which foreign matter is called by name, comb

Is hairless and windswept and burnt by the sun

Until he is regretful o'er just what he's done.

To move through the daylight without covering his head

Causes shades of red agony and his wish to be dead.

Summer is the season which causes him hate.

When it comes once a year he curses his fate,

And wishes for winter, his one season's love,

And when it doth come he thanks God up above.

For in winter it's as white as the fresh fallen snow,

And resembles a sphere of well flowered dough.

AGB

GRASS HIGH is searching for the best examples of POETRY dealing with the topic of The Feelings of People Alone in Large Cities

An award of twenty dollars will be given the author of the poem chosen by the Editors of GRASS HIGH as the best representation of the topic.

(continued from p. 4)

Another interesting statement that he makes is "Therefore let us not cheat our children, our precious gifts from God, by neglecting to discipline them!" It is my opinion that a statement such as this is the product of a sick mind. Our senior dean because of his position of authority over a large group of young adults poses a threat to our community. Should a mind whose only thought revolves around an act of discipline be allowed to exert influence over the young minds of our community? I think not. I would urge the Board of Education to request that this dean amend his thinking or resign. The man in the dean's position must be qualified to the extent that his concern is to help the students rather than discipline or punish them.

This pamphlet also contained an article from the freshman dean. I should like to say that Dean Engers, in his article, shows a great deal of promise. He appears to be genuinely interested in the problems of the students entrusted to him. All I can say to him is to keep up the good work.

The last thing of any interest in the pamphlet was about the despicable and disgusting detention policy at Central. I think most students feel the same way as I about this policy. Therefore I will not even go into it.

In the whole pamphlet I could see only one really bright side. We were not subjected to an article written by Mr. Diekelman.

Senior Editor
Grass High

MOVIES

The Penthouse is a brilliant put-on and one of the best English films ever made. It's about Bruce and Barbara, a couple indulging in extramarital activities in a borrowed, posh pad, who open the door one morning for the "meter man." In troop Tom and his playmate Dick. They quickly tie up Bruce in gay ribbons and force Barbara through the early stages of their all-day "party." First, there are two large tumblers of whiskey for her and puffs of pot, then a little sadism with a switchblade for Bruce while Barbara submits willingly to a gang bang. And just when we think they're done, another merry-maker arrives, Harry, the female keeper of Tom and Dick, and we're off for more games.

Peter Colinson wrote and directed this absorbing tale. The five actors are superb, especially Tony Beckley. The photography is perfect, and the dialog is wonderously comic and revealing. One monologue delivered by Tom about what happens to baby allegators is worth the price of admission. The message is glaringly evident. Only those with low minds will choose not to look past the degeneracy. The Penthouse is a must for all.

THE PENTHOUSE

* * * *

BARBARA	SUZY KENDALL
BRUCE	TERENCE MORGAN
TOM	TONY BECKLEY
DICK	NORMAN RODWAY
HARRY	MARTINE BESWICK
DIRECTION	PETER COLINSON

PARAMOUNT

O O O

THE BEST OF 1967

Below, the best in cinematic effort by the world's motion picture makers for this year just past is recorded.

1. Blow Up
2. The Penthouse
3. Bonnie and Clyde
4. How I Won The War
5. Reflections In A Golden Eye
6. A Man For All Seasons
7. In The Heat Of The Night
8. Cool Hand Luke
9. Marat/Sade
10. The Good, The Bad And The Ugly

cont. from p. 9)
e rose and climbed out
little unsurely into
he midst of several
trange, un-Connecti-
ut-like people.
he area was open ex-
ept for the one wierd
ree. It seemed to be
he edge of a village.
he strangers peered
trangely at the young
an. One whispered,
We saw you descend.
ho are you?" Before
e could answer the
trangers were swept
side as two horse-
en rode up. (The Bad
uys) They were black
oods that covered
heir faces. One of
hem pointed at the
oung man and said,
You — we are the In-
uisitors. Come with
s." The other one
eached down and
ulled him up onto
he horse, and they
ere gone.
ow, this land to
hich fate brought
he young man was
uled by an old king
amed Gohngonn. He
oved his people but
ore than that he lov-
d to rule, and to do
o he had made many
rippling alliances.
or his generals were
trong and his sons
ere eager for power.
ohngonn ruled from
castle atop the
ighest mountain in
he land. It was to
he castle that the
oung man was taken.
he sky was very dark
nd drear. The castle's
isage was terribly
inous and dire al-
hough it was painted
blinding white. The
oat was deep and dank.
he Inquisitors dragged
he young man, who was
ore bewildered than
afraid, into the great
hall. The roof was six-
ty feet high and the
hall was hundereds long.
At the far end sat
Gohngonn surrounded by
his court. On his right
sat a small round man
in flowing robes and
a tall pointed blue hat
upon which were printed
many white stars. He
was DeUsk, the royal
wizard and explainer.
The Inquisitors threw
the young man down at
the foot of the thrown.
He looked up helplessly
as Gohngonn, said in a
puzzled voice, "Now
what are we to do with
you?" An old noble
of the court came forth.
The noble called Spock
smiled and said, "But
your majesty, why he is
to be honored. Yes, an
honored guest for what
he has done." Gohngonn
nodded assent, but just
then a message arrived..
.....
(continued next issue)

COMRADE KIEF
meditation



COMING NEXT ISSUE

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MAD JOHN APPEARS
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RESULTS OF THE FIRST
ANNUAL GRASS HIGH
MUSIC POLL
AN EXPOSÉ ON THE
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PERSY SPEAKS OUT: AN
INTERVIEW
THE CONCLUSION OF
"IN WONDERLAND"
ESSAYS ON SYMBOLISM
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OLIC HIGH
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THE PERFECT SOLUTION
TO THE WAR IN VIET
NAM
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SUPREME COURT, U. S.

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No. [redacted] 321

In the

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204, COUNTY OF WILL, STATE OF ILLINOIS; ARTHUR L. BRUNING, DAVID R. ROSS, HOWARD JOHNSON and CLAYTON WINTERSTEEN,

Petitioners,

vs.

RAYMOND SCOVILLE, A Minor, and MERRILL SCOVILLE, As Father and Next Friend; ARTHUR BREEN, A. Minor, and JERRY BREEN, As Father and Next Friend,

Respondents.

ANSWER TO PETITION FOR CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1754

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ANSWER TO PETITION FOR CERTIORARI

ARGUMENT

This case comes to this Court on a Record in which no evidence was taken by the Trial Court, defendants' Motion To Dismiss the Complaint having been granted.

The Seventh Circuit sitting *en banc* held that plaintiffs could not be punished without a judicial evidentiary hearing in which competing interests were balanced and in

which the defendants sustained their burden of proving that the distribution of plaintiffs' journal posed an immediate threat of substantial disruption of or material interference with educational activities.

There is no conflict of the instant matter with either *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F. 2d 195 (6th Cir., 1969), or *Jones* v. *State Board of Education of and for the State of Tennessee*, 407 F. 2d 834 (6th Cir., 1969).

In *Norton* the Court found that plaintiffs' speech was unprotected only after conducting an evidentiary hearing in which testimony was taken concerning the objective probabilities that the speech alleged to be protected would cause material disruption at the school. The record in the instant matter indicates that unlike *Norton*, neither the school authorities, nor the Trial Court made any evidentiary findings that the publication could have caused such material disruption. In fact, the Trial Court expressly admitted that "[it] must be assumed true in passing on the pending motion to dismiss, that the distribution of 'Grass High' created no disturbance which did, or could have caused, any commotion or disruption of classes." (Petition For Certiorari, Appendix A-2).

Unlike the record in the instant matter, in *Jones*, school authorities and the Trial Court found that the plaintiffs had "disrupted a meeting of the student body;" further one of the plaintiffs did not tell the truth at certain disciplinary hearings. 407 F. 2d 834, 836.

School administrators do have the right to prevent "substantial disruption or material interference" before it occurs. However, petitioners must establish such an immediate danger with objective evidence of all the circumstances, rather than with just their personal subjec-

tive fears arising from examination of words taken out of context. *Tinker* v. *Des Moines School District,* 393 U.S. 505 (1969); *Brandenburg* v. *Ohio,* 395 U.S. 444 (1969).

Petitioner's contention that certain words alone regardless of contrary evidence of their non-injurious effect, are per se unprotected, would expressly conflict with previous holdings of this Court in *Pickering* v. *Board of Education,* 391 U.S. 563 (1968), *Brandenburg* v. *Ohio,* 395 U.S. 444 (1969), *Wood* v. *Georgia,* 370 U.S. 375 (1962), *Dennis* v. *U.S.,* 341 U.S. 494 (1951), *Yates* v. *U.S.,* 354 U.S. 298 (1957) and *Bridges* v. *California,* 314 U.S. 252 (1941).

CONCLUSION

In finding that plaintiffs-respondents were entitled to an evidentiary hearing, the Seventh Circuit applied established principles of law. It is respectfully submitted that the Petition For Certiorari be denied.

Respectfully submitted,

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